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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TERRY STEWART, Director,
Arizona Department of Corrections, et al.,
Petitioners,

vs.

RAMON MARTINEZ-VILLAREAL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF THE PETITIONERS

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MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE IN SUPPORT OF THE PETITIONERS

Pursuant to Supreme Court Rule 37.3, the Criminal Justice Legal Foundation respectfully moves for leave to file the accompanying brief *amicus curiae* in support of the petitioners. Counsel for petitioners has consented, but counsel for respondent has withheld consent.

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF) is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient and reliable determination of guilt and swift execution of punishment.

The Ninth Circuit's evasion of the successive petition limits established by Congress transforms the issue of a prisoner's

competency to be executed into a tool for delay and needless relitigation. This is contrary to the rights of victims and society which CJLF was formed to advance.

For the foregoing reasons, *amicus* requests for leave to file its brief.

November, 1997

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF THE PETITIONERS

SUMMARY OF FACTS AND CASE

Fifteen years ago, Ramon Martinez-Villareal murdered Jim McGrew and Fernando Estrada.[1] He stated later that he killed them "because of his pure balls, that he was very macho." *State* v. *Martinez-Villareal*, 702 P. 2d 670, 673 (Ariz. 1985). He was convicted of these murders and sentenced to death. *Id.*, at 672. The Arizona Supreme Court affirmed. *Id.*, at 681, cert. denied *sub nom. Martinez-Villareal* v. *Arizona*, 474 U. S. 975 (1985).

Subsequent proceedings through April of 1996 are described in the Ninth Circuit's previous opinion, *Martinez-Villareal* v. *Lewis*, 80 F. 3d 1301, 1304-1305 (CA9 1996):

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1. Rule 37.6 Statement: This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

1. State post-conviction review (PCR), denied April 18, 1986.

2. State supreme court review of the denial, denied June 9, 1986.

3. A federal habeas petition, denied for containing unexhausted claims.

4. A second federal habeas petition, on which a stay of execution was issued June 10, 1986, to exhaust state remedies.

5. A second state PCR, denied July 12, 1988.

6. Review of the second state PCR, denied by the Arizona Supreme Court.

7. Certiorari on the second state PCR, denied. *Martinez-Villareal* v. *Arizona*, 493 U. S. 874 (1989).

8. A third federal habeas petition, including for the first time a claim of incompetence to be executed, dismissed as unexhausted in 1991.

9. A third state PCR, denied August 13, 1991. The competency to be executed claim was denied on the ground that PCR was not the correct procedure for such a claim. See 80 F. 3d, at 1307.

10. Review of the denial of the third state PCR, denied April 7, 1992.

11. Certiorari on the third state PCR, denied October 5, 1992. *Martinez-Villareal* v. *Arizona*, 506 U. S. 893.

12. A fourth federal habeas petition, filed March 25, 1993.

The District Court then withdrew its prior dismissal orders, denied relief on the guilt phase, granted relief on the penalty phase, and held the incompetency claim to be premature. The Ninth Circuit affirmed on guilt and reversed on penalty, thereby reinstating the judgment. The competency holding had not been challenged on appeal. 80 F. 3d, at 1309.

13. This Court denied certiorari to review the Ninth Circuit's decision December 9, 1996. *Martinez-Villareal* v. *Lewis*, 519 U. S. ___, 136 L. Ed. 2d 517, 117 S. Ct. 588.

14. This year, Martinez-Villareal invoked the procedure established by Arizona for adjudicating competency claims, Ariz. Rev. Stat. Ann. §§ 13-4021 to 13-4024. After four days of testimony, the trial judge held he was competent. Combined Alternative Petition 2.

15. On May 16, 1997, the Arizona Supreme Court upheld this ruling. *Ibid.*

16. On June 23, 1997, the federal District Court denied Martinez-Villareal's motion to reopen the prior habeas proceeding, holding that such reconsideration was precluded by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132. *Martinez-Villareal* v. *Stewart*, 118 F. 3d 628, 630 (CA9 1997) (*per curiam*).

17. On May 20, 1997, this Court denied certiorari to review the state competency holding. *Martinez-Villareal* v. *Arizona*, 520 U. S. ___, 137 L. Ed. 2d 1044, 117 S. Ct. 1840 (1997).

The present proceeding involves two applications. Martinez-Villareal moved in the Ninth Circuit for permission to file a successive habeas petition, 118 F. 3d, at 629, and presented an original habeas petition to Circuit Judge Nelson of that court. *Id.*, at 634. The Ninth Circuit panel dismissed the former as unnecessary and transferred the latter to the District Court. *Id.*, at 634-635.

Terry Stewart, Director of the Arizona Department of Corrections, respondent in the court below, petitioned this Court for relief in several alternative forms. On October 14, this Court granted the petition for writ of certiorari.

SUMMARY OF ARGUMENT

The present case revolves around statutory language that is clear and should not be rewritten in the guise of interpretation. The canons of statutory construction, though useful for interpreting unclear statutes, are not needed when the relevant language is clear. Therefore, the Court of Appeals should not have ignored the plain language of the habeas statute in order to avoid an alleged constitutional problem with the statute.

The Suspension Clause, as originally understood, requires neither federal habeas for state prisoners nor habeas as a mechanism of collateral attack on judgments of courts of competent jurisdiction. The only colorable argument that it requires either today is the contention that this provision has somehow "evolved" to mean something different than it did when it was enacted. Whatever justification there may be for such constitutional evolution in other contexts, this notion should not be applied to the question of when, by whom, and how many times a criminal judgment should be reviewed. This decision has always been within the legislative power to make.

A habeas court lacks subject-matter jurisdiction to review a prisoner's competency to be executed. For state convicts, Congress has only authorized federal habeas to contest unconstitutional custody. An attack on competency to be executed contests neither custody nor the validity of the conviction or sentence, as it only addresses when the inmate is to be executed. Therefore, the prisoner does not deny the constitutionality of his custody, and habeas is unavailable.

Ford v. *Wainwright* does not establish habeas jurisdiction for competency claims. The issue was never addressed by this Court, and subject-matter jurisdiction cannot be conferred *sub silento*.

The line between habeas and 42 U. S. C. § 1983, the proper forum for competency claims, has sharpened since *Ford* v. *Wainwright*. *Heck* v. *Humphrey* and *Edwards* v. *Balisok* both demonstrate that habeas and § 1983 are not interchangeable.

Heck, *Edwards*, and *Preiser* v. *Rodriguez* establish the principle that an action that is cognizable under habeas cannot also be maintained under § 1983. The converse is also true. If an action is proper under § 1983, then it should not be maintained under habeas. This principle is further supported in various decisions of the circuit courts.

One of the strongest examples that habeas is not the proper forum for contesting competency to be executed is found in method-of-execution cases. Several circuits, most prominently the Ninth, have entertained § 1983 attacks on a state's method of execution, distinguishing habeas because the claim did not contest the validity or the length of the sentence. If method of execution is appropriate for a § 1983 action, then when the execution is to take place is equally subject to § 1983's jurisdiction.

The procedural differences between habeas and § 1983 make § 1983 the more practical forum for hearing competency claims. The Ninth Circuit found that the exhaustion requirement, the nature of competency claims, and the limits on successive petitions combined to make competency claims impossible to raise on habeas, if all procedures were followed. Instead of using this to justify rewriting the habeas statute, the Ninth Circuit should have understood that these facts pointed out that § 1983 was the superior forum for the prisoner's competency claim. Since § 1983 does not have an exhaustion requirement, and jurisdiction for a § 1983 action does not depend upon the timing of the habeas petition, § 1983 litigation may proceed in a more expeditious manner than under the Ninth Circuit's interpretation of habeas corpus.

The prisoner's remedy under § 1983 is both narrow and limited. An inadequate state remedy is a necessary component of any federal action under *Ford* v. *Wainwright*. None of the *Ford* opinions addressed whether the prisoner was actually competent to be executed. The case focused exclusively on the sufficiency of the state procedures for determining competency to be executed. The two concurring opinions, which provide

the controlling holdings of this case, recognize that inadequate state procedures are a requirement of any *Ford* claim.

Once a state provides the minimum necessary procedural guarantees, any finding that the prisoner is competent to be executed cannot be attacked in federal court. The abstention doctrine prevents federal courts from intervening before the resolution of any state competency proceedings. Once the state proceedings are concluded, res judicata and collateral estoppel will preclude competency from being relitigated in federal court.

There are strong policy reasons to leave the competency determination to the states. Competency is an inevitably inexact finding. When combined with the prisoner's overwhelming interest in avoiding execution, the possibility of endlessly frustrating litigation and relitigation is real. A proper reading of *Ford* minimizes these risks by leaving the decision to the states.

ARGUMENT

I. The statutory language is clear and should not be rewritten in the guise of interpretation.

The present case centers on statutory interpretation. Although statutory interpretation can be an arcane, rule-laden task, it does not have to be when the interpreting court is confronted with clear statutory language. Canons of construction and other devices may aid this Court in clarifying ambiguous statutory language, but cannot alter the plain meaning of an act of Congress. "We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such 'interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature.' " *United States* v. *Monsanto*, 491 U. S. 600, 611 (1989) (quoting *United States* v. *Albertini*, 472 U. S. 675, 680 (1985)).[2]

The relevant statutory language in the present case is unambiguous. Section 2244(b)(2) states in the clearest terms the general rule against successive petitions and its narrow exceptions:

> "(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> "(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> "(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> "(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense."

The Court of Appeals ignored the clear language of § 2244(b). Its ruling that exhaustion principles justify exempting competency-to-be-executed claims from § 2244(b)(2), see *Martinez-Villareal* v. *Stewart*, 118 F. 3d 628, 632-634 (CA9 1997), cannot be justified by the statutory text. Section 2244(b)(2) prohibits presenting a previously unpresented "claim . . . ." It makes no distinction concerning the type of claim. The only exceptions, found in § 2244(b)(2)(A)-(B), do

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2. The fact that the present case is at least tangentially criminal does not change the analysis. The rule of lenity applies to "the substantive ambit of criminal prohibitions" and their penalties. *Albernaz* v. *United States*, 450 U. S. 333, 342 (1981). The limits on successive petitions in 28 U. S. C. § 2244(b) do not belong to either category.

not apply to competency-to-be-executed claims. See *id.*, at 631. There are no other exceptions. "Claim" means claim. "We do not start from the premise that this language is imprecise. Instead, we assume that in drafting this legislation, *Congress said what it meant.*" *United States* v. *LaBonte*, 520 U. S. ___, 137 L. Ed. 2d 1001, 1010, 117 S. Ct. 1673, 1677 (1997) (emphasis added).

The Ninth Circuit justified its position with the maxim that courts should construe statutes to avoid " 'serious constitutional problems . . . .' " *Martinez-Villareal*, 118 F. 3d, at 632 (quoting *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988)). This rule cannot overcome the plain letter of an act of Congress. Therefore, "the Court will construe the statute to avoid such [constitutional] problems unless such construction is plainly contrary to the intent of Congress." *DeBartolo Corp.*, 485 U. S., at 575. This is not an invitation to rewrite unambiguous statutory text. "The canon of construction that a court should strive to interpret a statute in a way that will avoid an unconstitutional construction is useful in close cases, but it is ' "not a license for the judiciary to rewrite language enacted by the legislature." ' " *Chapman* v. *United States*, 500 U. S. 453, 464 (1991); see also *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 216-217 (1995) (declining to adopt unreasonable construction to avoid constitutional question).

The text of § 2244 cannot be ignored. If there is a constitutional problem, it must be met head on. Fortunately, this issue is easily addressed. The Ninth Circuit's concerns with § 2244(b)'s constitutionality are vastly overstated. Any constitutional attack on Congressional power to limit habeas corpus is spurious. See part II, *post*. The canon of construction invoked by the Court of Appeals is meant to avoid serious constitutional problems, see *DeBartolo Corp.*, 485 U. S., at 575, not spurious ones. Congress' unambiguous language should be enforced as written.

II. Congress has plenary authority to reduce or eliminate federal habeas for state prisoners.

The majority of the Court of Appeals panel thought there was a substantial constitutional question to be avoided by its extremely strained construction of the statute in question. *Martinez-Villareal* v. *Stewart*, 118 F. 3d 628, 632 (CA9 1997). The concurring opinion went so far as to declare the statute unconstitutional. *Id.*, at 635 (Nelson, J., concurring in the judgment). These opinions are remarkable for their complete lack of any discussion of or authority for the supposed constitutional requirement.

Upon examination, the constitutional question vanishes. Congress has no obligation whatsoever to provide federal habeas relief for state prisoners. It has absolutely banned such relief before, and it could do so again. *A fortiori*, it can enact lesser limitations.

A. The Original Understanding.

The First Congress had this to say about federal habeas for state prisoners:

> "*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify." Judiciary Act of 1789, ch. 20, § 14, 1 Stat. 81, 82.

This Act "was passed by the first Congress assembled under the Constitution, many of whose members had taken part in the framing of that instrument, and is contemporaneous and weighty evidence of its true meaning." *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297 (1888).

Between this Act and the present question, there are only three logical possibilities. Either (1) the Suspension Clause does not require habeas corpus in federal courts for state

prisoners;[3] (2) the state-prisoner limitation in the Act was unconstitutional; or (3) the limitation was constitutional when enacted, but the Suspension Clause has since "evolved" so that Congress could not enact the same statute today. To establish the first possibility, it is necessary only to refute the other two.

The contemporary understanding of the Suspension Clause rests not only on the clear wording of the Judiciary Act,[4] but also from the lack of controversy surrounding it. Cf. *Lee* v. *Weisman*, 505 U. S. 577, 626 (1992) (Souter, J., concurring) (Alien and Sedition Acts, which were hotly contested, are not an authoritative guide to First Amendment). The high regard for the writ of habeas corpus at the time of the Constitution is well known. See, *e.g.*, The Federalist No. 84, pp. 511-512 (C. Rossiter ed. 1961) (A. Hamilton); L. Martin, Genuine Information (1788), reprinted in 3 The Founders' Constitution 328 (P. Kurland & R. Lerner eds. 1987); T. Jefferson, Letter to James Madison, July 31, 1788, reprinted in 1 The Founders' Constitution, at 476. It is simply inconceivable that a clear and blatant violation of a cherished right would have been enacted without controversy and uniformly enforced by the courts. Yet that is what happened with this provision.

Amidst the controversies that swirled around the Judiciary Act, section 14 was a calm pool of consensus. The section was enacted by the Senate from the first draft, with only one minor amendment relating to a different writ. Warren, New Light on the History of the Federal Judiciary Act of 1789, 37 Harv. L. Rev. 49, 95 (1923). The main debate in the House was

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3. Duker, after examining the history of the clause, concludes the original intent was just the opposite, "to restrict Congress from suspending *state* habeas for *federal* prisoners . . . ." W. Duker, A Constitutional History of Habeas Corpus 155 (1980) (emphasis added).

4. *Marbury* v. *Madison*, 1 Cranch 137 (1803) did, of course, hold a portion of the same act unconstitutional. That case, however, involved an application that was anything but clear from the face of the language and probably never occurred to Congress.

whether to create lower federal courts at all. See *id.*, at 123-131.

The state-prisoner limitation was invoked in *Ex parte Cabrera*, 4 F. Cas. 964 (No. 2,278) (CCD Pa. 1805). Cabrera was a secretary to the Spanish legation charged with forgery in state court in Pennsylvania. *Ibid.* He claimed diplomatic immunity, embodied in a federal statute. *Id.*, at 964-965. Justice Bushrod Washington, sitting as Circuit Justice, reluctantly decided the circuit court had no jurisdiction. *Id.*, at 965. First, he noted that the lower federal courts had no jurisdiction at all except what is conferred on them by statute. *Ibid.* There is no hint that a different rule applies to habeas corpus. Section 14 of the Judiciary Act was then clear and on point. *Id.*, at 966. Judge Peters concurred. *Id.*, at 965.

Justice Washington was a member of the *Marbury* Court and obviously aware of that then-recent decision. He could not have doubted his authority to declare this limitation unconstitutional if he thought it were. It seems that the constitutionality of the limitation was clear, whatever his doubts about its wisdom. See *id.*, at 966. Accord, *United States* v. *French*, 25 F. Cas. 1217, 1217 (No. 15,165) (CCD N.H. 1812).

The state-prisoner limitation was so well settled that it did not reach this Court for over 50 years. *Ex parte Dorr*, 3 How. 103 (1845) involved a defendant convicted of treason against the State of Rhode Island. He moved for an original writ of habeas corpus in the Supreme Court. *Id.*, at 104. The Court held it had no jurisdiction due to the state-prisoner limitation of section 14. *Id.*, at 105. "Neither this nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness." *Ibid.*

The validity of the state-prisoner limitation appears to have been universally acknowledged. *Amicus* has not found a single doubt expressed on the subject by any antebellum authority. See, *e.g.*, R. Hurd, A Treatise on the Right of Personal Liberty and on the Writ of Habeas Corpus 154 (1st ed. 1858). Any

contention that the Suspension Clause required federal habeas for state prisoners at the time of the Founding would appear to be utterly unsupportable.

B. The "Living Constitution."

A law review article written in anticipation of the present legislation takes the position that the Suspension Clause forbids time limits on habeas corpus petitions by state prisoners collaterally attacking their convictions. Mello & Duffy, Suspending Justice: The Unconstitutionality of the Proposed Six-Month Time Limit on the Filing of Habeas Corpus Petitions by State Death Row Inmates, 18 Review of L. & Social Change 451 (1991). Yet even this partisan article has to admit that the clause as originally enacted applied only to federal prisoners. *Id.*, at 462. The only ground these authors can find to make their stand is the last redoubt of judicial autocracy: the "living Constitution." *Id.*, at 472.

The Suspension Clause is not the only provision of the Constitution at issue in this case. Article I, section 1 provides "All legislative powers herein granted shall be vested in a Congress of the United States . . . ." The capacity to make the policy choices at issue in this case was originally within the legislative power. By what means did it cease to be? The Constitution has not been amended to make that change.

Justices of this Court supporting broad federal habeas for state prisoners have repeatedly insisted that the Reconstruction Congress made that choice. See *Brown* v. *Allen*, 344 U. S. 443, 499 (1953) (opinion of Frankfurter, J.); *Fay* v. *Noia*, 372 U. S. 391, 417-418 (1963), overruled on other grounds in *Coleman* v. *Thompson*, 501 U. S. 722, 750 (1991); *Butler* v. *McKellar*, 494 U. S. 407, 427-430 (1990) (Brennan, J., dissenting). Assuming this to be true for the sake of argument, does a policy choice made in a time of grave national crisis forever bind future Congresses, so that policy cannot be adjusted to meet changing times? Particularly where the critical question is confidence in state courts, see *Butler*, 494 U. S., at 430 (dissent), the policy-

maker should be able to make adjustments as state courts grow more worthy of confidence.

To be sure, there are a few decisions of this Court that construe constitutional provisions to forbid practices that would clearly have been considered valid when those provisions were adopted. See, *e.g.*, *Bloom* v. *Illinois*, 391 U. S. 194, 210-211 (1968) (requiring jury trial for two-year contempt punishment); *Roe* v. *Wade*, 410 U. S. 113, 174-177 (1973) (Rehnquist, J., dissenting) (numerous abortion laws in effect at time of Fourteenth Amendment).

Whatever legitimacy such decisions may have in the realm of the most intimate personal decisions, see *Planned Parenthood* v. *Casey*, 505 U. S. 833, 852-853 (1992) (lead opinion), or in striking down practices acknowledged to be tyrannical even at common law, see *Bloom*, 391 U. S., at 198-199, n. 2, the issue of federal habeas for state prisoners is one of an entirely different character. It does not concern what acts will be legal or illegal. It does not concern what protections defendants will receive at trial or in subsequent proceedings. It concerns only when, by whom, and how many times that trial or proceeding will be reviewed, decisions which have always been within the legislative power to make.

The assertion has repeatedly been made that the constitutional mandate has "evolved" since the enactment of the Suspension Clause. See, *e.g.*, Mello and Duffy, *supra*, 18 Review of L. & Social Change, at 462. What is really sought here, however, is not evolution, but the Big Bang.

No decision of this Court holds that Congress has *any* obligation to extend federal habeas to state prisoners. The principal implication that it might is a dictum in a since-overruled case. See *Fay*, *supra*, 372 U. S., at 406.[5] There is no

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5. Not only is *Fay* an overruled case, but its historical dissertation has long since been discredited. See Mayers, The Habeas Corpus Act of 1867: The Supreme Court as Legal Historian, 33 U. Chi. L. Rev. 31, 32 (1965); Oaks, Legal History in the High Court—Habeas Corpus, 64 Mich. L. Rev. 451, 459 (1966).

historical, textual, or controlling precedential support for an argument that Congress has less than complete authority over these matters. Cf. *Carlisle* v. *United States*, 517 U. S. ___, 134 L. Ed. 2d 613, 626-627, 116 S. Ct. 1460, 1467-1468 (1996).

The history of federal habeas for state prisoners is not an evolution of a constitutional doctrine but the evolution of a statutory enactment.[6] That evolution has occurred through a combination of expansive decisions by this Court with Congress' failure to abrogate them. See *Wright* v. *West*, 505 U. S. 277, 305-306 (1992) (O'Connor, J., concurring in the judgment). But this Court's traditional reluctance to overrule its statutory construction precedents is premised squarely on the fact that Congress *can* abrogate them. *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172-173 (1989). To say at this point that these decisions have been suddenly removed from the legislative power would be playing a constitutional shell game with the American people.

In *Wright* v. *West*, No. 91-542, the proponents of broad federal habeas vehemently asserted that the question belonged to Congress and not the judiciary. Brief of the American Bar Assn. as *Amicus Curiae* 7; Brief of American Civil Liberties Union as *Amicus Curiae* 2-3; Brief of Gerald Gunther *et al.* as *Amici Curiae* 53-55; Brief of Benjamin R. Civiletti *et al.* as *Amici Curiae* 29-30. The stalemate in that case effectively told the American people that the judiciary could not help them; those seeking justice for murder victims must turn to Congress to lift capital punishment out of the habeas quicksand. They

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6. A tortured argument for a constitutional mandate for federal habeas based on the Fourteenth Amendment can be found in Steicker, Incorporating the Suspension Clause: Is There A Constitutional Right to Federal Habeas Corpus for State Prisoners?, 92 Mich. L. Rev. 862 (1994). The argument founders on the text of the Amendment. It unequivocally obligates only the states, U. S. Const., Amdt. 14, § 1, and empowers Congress rather than limiting it. *Id.*, § 5. Steiker acknowledges this, and then goes off to attempt to justify his thesis *despite* the clear text. 92 Mich. L. Rev., at 898-899. This is, in effect, an admission that he is calling upon courts to rewrite the Constitution rather than enforce it.

did. It did. For this Court to do an about-face now and declare that these decisions are not within the legislative power after all would be a massive breach of faith with the American people.

Federal habeas for state prisoners was a subject entirely within the legislative power in 1789, and it remains so today. The Suspension Clause has no application to this case.

III. A habeas court lacks subject-matter jurisdiction to review competency to be executed.

For state convicts, Congress has authorized federal habeas "*only* on the ground that he is in *custody* in violation of the Constitution of the United States." 28 U. S. C. § 2254(a) (emphasis added). A prisoner's attack on his competency to be executed pursuant to a valid state conviction and sentence does not come within the subject-matter jurisdiction of federal habeas corpus, because the claim does not contest the constitutionality of his custody. Since he does not challenge the validity of his conviction or sentence, the prisoner is precluded from attacking his competency to be executed on federal habeas corpus. This does not leave the truly incompetent prisoner without recourse. A remedy under 42 U. S. C. § 1983 remains open to vindicate his Eighth Amendment interest in his competency to be executed. As *amicus* will demonstrate, this relief is narrow, and dependent upon the absence of adequate state procedures for determining his competency.

A. The Initial Question.

Subject-matter jurisdiction is indispensable to any litigation before any federal court. "Federal courts are courts of limited jurisdiction." *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U. S. 694, 701 (1982). Therefore, subject-matter jurisdiction "is an article III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign." *Id.*, at 702.

Important consequences flow from these principles. See *ibid.* Parties may neither consent to nor waive subject-matter jurisdiction, and estoppel principles do not apply to this issue. *Ibid.* Therefore,

> "a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. '[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record.' " *Ibid.* (quoting *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884)).

This Court should decide the subject-matter jurisdiction issue before any other issue. This case involves a substantial invasion of the state's prerogative in criminal law, enforcing the penalty for its most serious crime. As an order of a federal court is invalid without subject-matter jurisdiction, *Insurance Corp.*, *supra*, 456 U. S., at 701, a federal court should be particularly sure of its subject-matter jurisdiction before disrupting a capital sentence as in the present case.

The fact that in *Ford* v. *Wainwright*, 477 U. S. 399 (1986) this Court upheld a habeas petition on competency-to-be-executed grounds does not establish binding precedent that subject-matter jurisdiction exists. *Ford* only examined the propriety of state procedures; it did not address whether a habeas court had subject-matter jurisdiction to determine a prisoner's competency to be executed. See *post*, at 26-27. Jurisdictional issues are not decided *sub silento*; the issue is open until this Court directly confronts it. See *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 63, n. 4 (1989); *Federal Election Comm'n* v. *NRA Political Victory Fund*, 513 U. S. 88, 97 (1994). It is now time to confront subject-matter jurisdiction.

B. No Jurisdiction.

When the prisoner attacks his competency to be executed, he does not attack the legality of his conviction or sentence. "Rather, the only question is not *whether*, but *when*, his execution may take place." *Ford*, *supra*, 477 U. S., at 425 (Powell, J., concurring in part and concurring in the judgment) (emphasis in original). This distinction removes the prisoner's action from habeas corpus jurisdiction and places it within the subject matter of the federal civil rights statute, 42 U. S. C. § 1983. Although not stated expressly by this Court, this principle follows from its cases distinguishing habeas and § 1983, and from lower court decisions that demonstrate an understanding of this distinction.

1. Heck and Edwards.

In the years since *Ford* v. *Wainwright* was decided, the line between habeas and § 1983 has sharpened. *Heck* v. *Humphrey*, 512 U. S. 477 (1994) was decided "at the intersection of the two most fertile sources of federal-court prisoner litigation— . . . 42 U. S. C. § 1983, and the federal habeas corpus statute . . . ." *Id.*, at 480. Petitioner Heck was convicted of voluntary manslaughter. While his appeal was pending, Heck filed a § 1983 action for money damages against several local prosecutors and a state police investigator, alleging improper investigation leading to his arrest, the knowing destruction of exculpatory evidence, and using an improper voice identification procedure at trial. *Id.*, at 478-479. The action did not ask for injunctive relief or release from custody. *Id.*, at 479.

Petitioner's case touched on two very different actions. Both § 1983 and habeas "provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials, but they differ in their scope and operation." *Id.*, at 480. Thus, while exhaustion of state remedies is a prerequisite to federal habeas corpus, see *Rose* v. *Lundy*, 455 U. S. 509, 510 (1982), § 1983 does not require exhaustion, even when a state prisoner is the plaintiff. See *Heck*, 512 U. S., at 480. Since

Heck did not ask to have his sentence vacated or conviction overturned, the rule of *Preiser* v. *Rodriguez*, 411 U. S. 475, 489-490 (1973), that habeas was the exclusive remedy for such claims, was not squarely on point. See 512 U. S., at 481.

Preiser did not create an exhaustion requirement for certain § 1983 actions: "it merely held that claims by state prisoners are not *cognizable* under that provision, and must be brought in habeas corpus proceedings, which do contain an exhaustion requirement." *Ibid.* Furthermore, in dictum the *Preiser* Court stated that a prisoner who only sought damages would never have to exhaust state remedies before filing the § 1983 action. *Ibid.* Yet the real differences between habeas and § 1983 led the *Heck* Court to abandon the *Preiser* dictum when the damage claim rests on a claim that the prisoner's conviction is invalid. See *id.*, at 481-482.

The *Heck* Court did not have to create an exhaustion requirement in order to depart from the *Preiser* dictum. It instead turned back to *Preiser*'s original premise, and found no jurisdiction to rule on the substance of petitioner's claims.

> "The issue with respect to monetary damages challenging conviction is not, it seems to us, exhaustion; but rather, the same as the issue was with respect to injunctive relief challenging conviction in *Preiser:* whether the claim is cognizable under § 1983 at all. We conclude that it is not." *Id.*, at 483.

Heck still had the means for obtaining relief. He first had to successfully set aside his conviction before he could bring his § 1983 action. *Id.*, at 486-487. This sharpened the line between § 1983 and habeas corpus. Section 1983's tort action is not a proper vehicle for attacking criminal judgments. See *id.*, at 486.

The division between habeas corpus and § 1983 was reinforced in *Edwards* v. *Balisok*, 520 U. S. ___, 137 L. Ed. 2d 906, 117 S. Ct. 1584 (1997), which extended *Heck* to § 1983 suits challenging the deprivation of good time credits. Edwards filed a § 1983 action for damages, claiming that the use of improper procedures deprived him of due process. *Id.*, at 912,

117 S. Ct., at 1586. He did not claim that the decision depriving him of the credits reached a wrong result. *Ibid.*, 117 S. Ct., at 1586-1587. The Ninth Circuit held that this substance/procedure distinction was sufficient to distinguish *Heck*. *Id.*, at 913, 117 S. Ct., at 1587.

The *Edwards* Court gave *Heck* its properly broad, natural reading. If "the nature of the challenge to the procedures could be such as necessarily to imply the invalidity of the judgment," *ibid.*, then *Heck* applied, and the underlying judgment had to be overturned before any § 1983 action. Allowing the mere implication of an attack on the validity of a sentence to remove an action from § 1983 underscores the sharp distinction between § 1983 and collateral attacks on convictions in habeas corpus.

Edwards and *Heck* clarified and expanded the principles set forth in *Preiser* v. *Rodriguez*. *Preiser* held that habeas was the exclusive remedy for a state petitioner challenging the fact or the duration of his confinement, in spite of the broad language of § 1983. See 411 U. S., at 488-490. While *Preiser* established some separation between habeas and § 1983, the distinction was not always clear. *Preiser*'s line between habeas and § 1983 was considerably less clear where damages, and not release from confinement, was concerned. See *id.*, at 494; *Heck*, 512 U. S., at 481-482. *Heck* clarified and reinforced the distinction between habeas and § 1983 by refusing to follow this dictum. See 512 U. S., at 482. The *Preiser* Court saw its holding as limited to actual attacks on the duration or legality of confinement. *Heck* and *Edwards* expanded *Preiser*'s limits to a much larger universe.

Preiser, *Heck*, and *Edwards* all deal with matters where habeas is the proper remedy to the exclusion of § 1983. The logic of these cases applies with equal force in the opposite direction; there are many actions for which § 1983 is the proper vehicle to the exclusion of habeas corpus. As *Preiser* noted, habeas is much more specific and narrow than § 1983. *Preiser*, 411 U. S., at 489. While the scope of habeas has expanded

considerably from its original bounds, it is still true that a habeas petitioner's "grievance is that he is being unlawfully subjected to physical restraint, and in each case habeas corpus has been accepted as the specific instrument to obtain release from such confinement." *Id.*, at 486. While habeas may have been extended to challenge "less obvious restraints," *id.*, at 486, n. 7, it is still tethered to its historic core function. "But those cases marked no more than a logical extension of the traditional meaning and purpose of habeas corpus—to effect *release* from illegal custody." *Ibid.* (emphasis added).

Any relief other than release from illegal custody must be found from a source other than the writ. Thus damages are not available on habeas corpus. See *id.*, at 494. The narrow, specific habeas corpus and the broad, general § 1983 are best viewed as mutually exclusive remedies; relief that is available under one is not available under the other.[7]

The distinction between habeas and § 1983 is both real and important. The two actions operate under very different procedural regimes. Habeas contains procedural barriers designed to preserve the integrity of state justice systems, such as the exhaustion requirement. See *id.*, at 491. Section 1983 also has its own requirements, such as res judicata, which applies with less strength on habeas corpus. See *id.*, at 497; but see 28 U. S. C. § 2254(d) (increased, but not complete, res judicata effect for prior state determinations).

2. Method of execution.

Ironically, one of the strongest demonstrations that habeas is not the proper forum for contesting competency to be executed comes from the Ninth Circuit. In *Fierro* v. *Gomez*, 77 F. 3d 301, 306 (CA9 1996), vacated on other grounds in *Gomez*

7. The *Preiser* Court noted that prison conditions might be challenged under both § 1983 and habeas. See *id.*, at 499. The present case does not involve this doubtful dictum. Preiser's characterization of habeas as limited, narrow and exclusive remains as true today as it did then.

v. *Fierro*, 519 U. S. ___, 136 L. Ed. 2d 204, 117 S. Ct. 285 (1996), the Ninth Circuit held that *method* of execution claims may be brought under 42 U. S. C. §1983. This necessarily undercuts the exercise of habeas jurisdiction in a *competency*-to-be-executed case.

In *Fierro*, the state claimed that habeas was the exclusive method for challenging method of execution. 77 F. 3d, at 304. The Ninth Circuit's rejection of this argument illuminates the proper line between habeas corpus and 42 U. S. C. § 1983 actions.

> "Our court has defined the appropriate situation in which to seek habeas relief as 'whenever the requested relief requires as its predicate a determination that a sentence currently being served is invalid or unconstitutionally long.' *Young v. Kenny*, 907 F. 2d 874, 876 (9th Cir. 1989), *cert. denied*, 498 U. S. 1126, 111 S. Ct. 1090, 112 L. Ed. 2d 1194 (1991). Plaintiffs here do not allege that their sentences are invalid. Nor do they allege that their sentences are unconstitutionally long. They seek only to prevent their executions by lethal gas." *Id.*, at 305.

As the *Fierro* Court found methods of execution analogous to challenging conditions of confinement, *ibid.*, there was no reason to transform plaintiffs' claim into a habeas petition. See *id.*, at 306. Other circuit courts have also entertained § 1983 actions attacking method of execution. See *Ingram* v. *Ault*, 50 F. 3d 898, 899 (CA11 1995) (*per curiam*); *O'Bryan* v. *McKaskle*, 729 F. 2d 991, 992-993 (CA5 1984) (*per curiam*); *Sullivan* v. *Dugger*, 721 F. 2d 719, 720 (CA11 1983) (section 1983 appropriate challenge to method of execution as prisoner does not contest "the fact or nature of his sentence or the state's right to execute him").

Under this reasoning, a competency-to-be-executed claim does not fall within habeas jurisdiction at all. This claim does not attack the legality of commitment, the common law function of habeas. See *Ex parte Watkins*, 3 Pet. 193, 202 (1830). Nor does it collaterally attack the underlying criminal judgment,

which is now the writ's chief function. See *Felker* v. *Turpin*, 518 U. S. ___, 135 L. Ed. 2d 827, 840, 116 S. Ct. 2333, 2340 (1996). The prisoner is not contesting whether he is going to be executed, but whether he is currently competent to serve his sentence. Unlike a collateral attack on the validity of a death sentence, whether the prisoner is to be executed is not at issue; the only question is when he will serve his sentence.[8] Habeas addresses the legality of the sentence, not the timing of its execution.

3. Other decisions.

Other decisions from the circuit courts further demonstrate that habeas and § 1983 are not interchangeable. When confronted with a prisoner who wished to challenge his ineligibility for work release on habeas corpus, Judge Posner presented an elegant framework for determining whether an action belonged in habeas or § 1983.

> "The cases suggest the following generalization. If the prisoner is seeking what can fairly be described as a *quantum change in the level of custody*—whether outright freedom, or freedom subject to the limited reporting and financial constraints of bond or parole or probation, or the run of the prison in contrast to the approximation to solitary confinement that is disciplinary segregation—then habeas corpus is his remedy. But if he is seeking a different program or location or environment, then he is challenging the conditions rather than the fact of his confinement and his remedy is under civil rights law, even if, as will usually be the case, the program or location or environment that he is challenging is more restrictive than the alternative that he

8. It is unrealistic to believe that many prisoners will be able to permanently bar execution on a competency-to-be-executed claim. Mental health is at best an inexact field. See *Medina* v. *California*, 505 U. S. 437, 451 (1992). Any diagnosis that a prisoner will *never* be competent to be executed must be viewed with great caution.

> seeks." *Graham* v. *Broglin*, 922 F. 2d 379, 381 (CA7 1991) (emphasis added).

As Judge Posner also noted, "[h]abeas corpus is not a compensatory remedy. The object is not to make whole someone who has suffered a loss; it is to determine whether a person is being confined in violation of basic norms of legality." *Allen* v. *Duckworth*, 6 F. 3d 458, 460 (CA7 1993). Excessive delay in resolving the prisoner's appeal of his conviction was not cognizable on habeas corpus because "[t]he petitioner was duly convicted, and the conviction upheld, if belatedly, in an appellate decision not claimed to be infected by any error that would justify his release on habeas corpus." *Ibid.* Habeas and § 1983 are separate entities. If one is unavailable, the other cannot act as its substitute. Therefore, "[h]abeas corpus does not provide a substitute for a damages suit even if such a suit would not be possible in the circumstances . . . ." *Id.*, at 461.

In *Moore* v. *Pemberton*, 110 F. 3d 22, 23 (CA7 1997) (*per curiam*), the Seventh Circuit admonished the District Court for transforming a "frivolous" and "malicious" § 1983 suit into a meritless habeas action.[9] *Ibid.* The District Court dismissed the *pro se* § 1983 action without ruling on the merits, but gave the prisoner " 'a reasonable period to channel his claims into a *habeas* action,' " claiming violations of *Wolff* v. *McDonnell*, 418 U. S. 539 (1974) or *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill*, 472 U. S. 445 (1985). *Moore*, 110 F. 3d, at 23 (emphasis in original). After the prisoner complied with the District Court's invitation, the court dismissed the amended petition on its merits. *Ibid.* As the Seventh Circuit properly noted,

9. The prisoner claimed that he was punished for disciplinary violations although he was not a prisoner on the date indicated on the disciplinary ticket. 110 F. 3d, at 23. His penalty was a verbal reprimand and loss of commissary privileges for two weeks. *Ibid.* His § 1983 action asserted a due process violation, and asked for $351,000 in compensatory and $3.2 million in punitive damages. See *ibid.* The Court of Appeals found the amount of damages "malicious" and the action "frivolous," since Moore "did not lose any liberty or property . . . ." *Ibid.*

"As a petition for a writ of habeas corpus, Moore's claim suffers from a deeper defect, which should have prevented the judge from resolving the claim. Moore does not seek release from custody and therefore cannot proceed under 28 U. S. C. § 2254. It is not enough to be 'in custody'; unless one is attacking the legality, duration, or (rarely) severity of that custody, a petition under § 2254 is improper." *Ibid.*

Transforming a § 1983 action into a habeas petition was more than a matter of form, it "converted a weak civil suit into an *untenable* demand for collateral review." *Ibid.* (emphasis added). There are many real differences between the two actions, see *id.*, at 23-24, making it impossible to treat them interchangeably.

4. Most practical forum.

The procedural differences between habeas and § 1983 also make § 1983 the more practical forum for hearing competency-to-be-executed claims. This is demonstrated by one of the Court of Appeals' primary justifications for its holding. The Ninth Circuit found that it is effectively impossible for a habeas court to hear a competency claim if the rule against successive petitions is in effect. See *Martinez-Villareal* v. *Stewart*, 118 F. 3d 628, 633-634 (CA9 1997). Instead of justifying a tortured construction of the statute, see *ibid.*, this procedural fact demonstrates § 1983's superiority as a forum for adjudicating competency claims.

The Ninth Circuit saw this problem arising from the exhaustion requirement, see 28 U. S. C. § 2254(b)(1); *Rose* v. *Lundy*, 455 U. S. 509, 522 (1982), and the special status of the competency-to-be-executed claim. In order for a competency claim to be exhausted, the state must issue a warrant of execution so that the prisoner may contest his competency in state court. See 118 F. 3d, at 633. If the prisoner files his first federal habeas petition after exhausting the competency claim, the automatic stay of execution issued upon filing the petition renders the "once-ripe claim premature" leading to its dismissal.

Id., at 634. If the competency claim is filed after the first habeas petition, it will be barred as successive. See *ibid.*

Section 1983 avoids these problems. It has no exhaustion requirement. See *Heck* v. *Humphrey*, 512 U. S. 477, 489 (1994). Since jurisdiction for a § 1983 action does not depend upon the timing of a habeas petition, see *Preiser* v. *Rodriguez*, 411 U. S. 475, 499, n. 14 (1973) (prisoner may simultaneously file a § 1983 action and a habeas petition), litigation will proceed more efficiently, as the prisoner will not have to finish attacking his conviction and sentence before contesting his competency.

Convenience cannot substitute for jurisdiction, but it can guide litigants to the proper forum. Section 1983's relative efficiency for litigating competency claims reinforces the idea that Congress intended such actions to be brought under § 1983 instead of habeas corpus.

C. Narrow Remedy.

1. Ford v. Wainwright.

Dismissing the prisoner's habeas petition for lack of subject-matter jurisdiction does not leave him without the means to enforce his rights. Absent an adequate state remedy, a prisoner can contest his competency to be executed in a § 1983 action under the standards established in *Ford* v. *Wainwright*, 477 U. S. 399 (1986). This action is both limited and narrow. It is not governed by the more expansive language found in the portion of Justice Marshall's opinion that has only plurality support, but by the narrow grounds found in the concurrences.

Ford involved an exceptionally strong case for delaying the prisoner's execution. While on death row, Ford developed an increasingly delusional obsession about the Ku Klux Klan. *Id.*, at 402. He eventually believed that the Klan and others were involved in a complex conspiracy to drive him to commit suicide. *Ibid.* He believed that the concrete enclosures used for prison beds contained the bodies of people killed by this

conspiracy. He thought that they were holding hostage in the prison 135 of his family and friends along with "senators, Senator Kennedy, and many other leaders." *Ibid.* Ford eventually assumed authority to end "the 'crisis,' " claiming to have fired a number of prison officials. "He began to refer to himself as Pope John Paul III, and reported having appointed nine new justices to the Florida Supreme Court." *Ibid.* A psychiatrist who examined Ford earlier continued seeing him at the request of Ford's counsel. *Ibid.* The psychiatrist "concluded . . . that Ford suffered from 'a severe, uncontrollable mental disease which closely resembles "Paranoid Schizophrenia With Suicide Potential" ' . . . ." *Id.*, at 402-403. Ford eventually stated that " 'I can't be executed because of the landmark case I won. Ford v. State will prevent executions all over.' " *Id.*, at 403.

Ford's counsel invoked the Florida procedures for determining a condemned inmate's competency. *Ibid.* The Governor appointed a panel of three psychiatrists to determine whether Ford had the capacity to understand the nature of his penalty and why it was being imposed on him. *Ibid.* The three psychiatrists interviewed Ford at a single, 30-minute meeting. *Id.*, at 404. The three came to different diagnoses, but all found Ford sane under state law. *Ibid.* With the competency procedure ended, the Governor signed Ford's death warrant. *Ibid.*

The lead opinion's analysis of the case began in Part II, which was joined by a majority of the Court. It established the foundation for the *Ford* rule: that the Eighth Amendment can regulate the adequacy of state procedures for determining an inmate's competency to be executed. See *id.*, at 405. The actual standard for determining competency was not addressed.

The majority then found that the Eighth Amendment does bar the execution of the insane. *Id.*, at 409-410. This issue's freshness before the Court is explained by its unremarkability. Executing the insane has been universally proscribed since the formation of the common law. See *id.*, at 406-408; 4 W. Blackstone, Commentaries 24-25 (1st ed. 1769). The proscription carried over to this country, see *Ford*, *supra*, 477 U. S., at

408, and was accepted by every state that had capital punishment when *Ford* was decided. See *id.*, at 408-409, n. 2.

Parts III-V of Justice Marshall's opinion were joined by only a plurality of the Court. The opinion examined the inadequacy of the Florida procedures in detail. See *id.*, at 413-417. Although it did not recommend any specific state procedures, the plurality opinion contained expansive language requiring something close to a full-scale sanity trial. See *id.*, at 413-416, 418 (plurality); *cf. id.*, at 425 (Powell, J., concurring in part and concurring in the judgment) ("I would not require the kind of full-scale 'sanity trial' that JUSTICE MARSHALL appears to find necessary").

On an issue without a majority, the controlling opinion is the one concurring in the result on the narrowest grounds. See *Marks* v. *United States*, 430 U. S. 188, 193 (1977). Justice O'Connor's opinion explicitly states that inadequacy of the state's remedies was an essential component of Ford's case. See *Ford*, 477 U. S., at 427 (concurring in the result in part and dissenting in part). Justice Powell's opinion implies the same. That opinion only sought to ensure that "basic fairness is observed . . . ." *Ibid.* (opinion concurring in part and concurring in the judgment). Therefore, because Ford had "raised a viable claim under the Eighth Amendment, *and* because the claim was not adjudicated fairly within the meaning of due process or of [28 U. S. C.] § 2254(d)," Ford could make his claim before a federal court. *Ibid.* (emphasis added). If the state procedures had been sufficient, then *Ford* would have reached a different result.

2. The remedy.

Ford v. *Wainwright* is a case about procedure. Once a state provides the minimum necessary procedural guarantees,[10] any

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10. Under *Marks*, *supra*, 430 U. S., at 193, *Ford* does not mandate the "mini trial" advocated by the plurality, but no more than "an impartial officer or board that can receive evidence and argument from the prisoner's counsel" including

finding that the prisoner is competent to be executed cannot be attacked in federal court.

In addition to the narrowness of the *Ford* rule, substantial procedural barriers limit a prisoner's ability to use the federal courts to bypass the state's competency process. Although § 1983 suits are not subject to an exhaustion requirement, *Heck* v. *Humphrey*, 512 U. S. 477, 489 (1994), they are subject to the abstention doctrine of *Younger* v. *Harris*, 401 U. S. 37 (1971).

Younger applies Congress' long-standing policy "to permit state courts to try state cases free from interference from federal courts." *Id.*, at 43. It is therefore "perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.*, at 45. The *Younger* rule is not limited to injunctions, but includes any proceeding that has the effect of precluding resolution of the issue by the state court in which it is pending. See *Samuels* v. *Mackell*, 401 U. S. 66, 72 (1971) (declaratory relief).

Pending proceedings include execution of judgments. *Hill* v. *Martin*, 296 U. S. 393, 403 (1935) (under Anti-Injunction Act). Furthermore, the Full Faith and Credit Act applies to § 1983 actions, giving state court judgments the same preclusive effect that they would have in a subsequent state court action. *Allen* v. *McCurry*, 449 U. S. 90, 96 (1980); 28 U. S. C. § 1738.

By protecting state court judgments in federal court "res judicata and collateral estoppel not only reduce unnecessary litigation and foster reliance on adjudication, but also promote comity between state and federal courts that has been recognized as a bulwark of the federal system." *Allen*, 449 U. S., at 95-96. *Ford* similarly respects the integrity of state competency determinations. In spite of strong evidence of Ford's incompetency, the *Ford* opinions did not attempt to set the standard of competency to be executed, concentrating solely on the adequacy of the state competency determination procedure. See *ante*, at 26-27. Furthermore, the controlling opinions understood the need to preserve state systems from federal intrusion. See *Ford* v. *Wainwright*, 477 U. S. 399, 427 (1986) (Powell, J., concurring in part and concurring in the judgment); *id.*, at 429 (O'Connor, J., concurring in the result in part and dissenting in part). The one exception to *Ford*'s deference, inadequate state procedures, parallels the main exception to collateral estoppel, the lack of a "full and fair opportunity" to litigate the issue. See *Allen* v. *McCurry*, *supra*, 449 U. S., at 95; *Montana* v. *United States*, 440 U. S. 147, 153 (1979).

There are strong policy reasons to leave the competency-to-be-executed issue to the relevant state procedures. Determining an individual's competency is inevitably inexact. See *Ford*, *supra*, 477 U. S., at 412 (plurality); *Medina* v. *California*, 505 U. S. 437, 451 (1992) (subjectivity of psychiatry); *Addington* v. *Texas*, 441 U. S. 418, 430 (1979) (same). When combined with the prisoner's overwhelming interest in frustrating the execution of his sentence, "the potential for false claims and deliberate delay in this context is obviously enormous." *Ford*, 477 U. S., at 429 (O'Connor, J., concurring in the result in part and dissenting in part). Multiple forums for litigation or extensive procedural requirements for the competency determination would make these problems much worse.

> "This potential is exacerbated by a unique feature of the prisoner's protected interest in suspending the execution of a death sentence during incompetency. By definition, this interest can *never* be conclusively and finally determined: Regardless of the number of prior adjudications of the issue, until the very moment of execution the prisoner can claim that he has become insane sometime after the previous determination to the contrary." *Ibid.* (emphasis in original).

A proper reading of *Ford* minimizes these risks. In any state with an adequate procedure for determining competency,

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expert testimony contradicting the state's psychiatric evidence. See *Ford*, 477 U. S., at 427 (opinion of Powell, J.); *id.*, at 430 (opinion of O'Connor, J.) (Florida procedure's only flaw was not allowing petitioner the opportunity to present his case).

the federal courts would not interfere with state competency findings. They would either abstain under *Younger* or deny relief on the ground that one of the elements of the claim, inadequacy of state process, is missing. Once the state court determines, *with* due process, that the inmate is indeed competent, that finding would be res judicata, and again the federal court would not interfere. Federal intervention remains available as a last resort where there is no adequate state process. See, *e.g.*, *Gibson* v. *Berryhill*, 411 U. S. 564, 577 (1973).

When it enacted the Antiterrorism and Effective Death Penalty Act of 1997, Congress decided that the vast majority of state convicts should only get one run through the federal system. An interpretation of that act that allows competency claims to be brought as a matter of routine would frustrate that intent. Allowing prisoners to bring § 1983 actions *only* when state competency procedures are inadequate would safeguard the federal right while still carrying out the intent of Congress.

CONCLUSION

The decision of the Ninth Circuit should be reversed.

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Respectfully submitted,

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